



SOLANO COUNTY
Department of Resource Management

675 Texas Street, Suite 5500
Fairfield, CA 94533
www.solanocounty.com

Telephone No: (707) 784-6765
Fax: (707) 784-2894

Bill Emlen, Director
Clifford K. Covey, Assistant Director

June 24, 2011

Mr. Joe Grindstaff
Executive Officer
Delta Stewardship Council
990 Ninth Street, Ste 1500
Sacramento CA 95814

Re: Fourth Draft of the Delta Plan: Solano County Comments

Dear Mr. Grindstaff:

The County of Solano continues to monitor and comment, as appropriate, on successive drafts of the Delta Plan. Our comments herein focus on Draft 4. Each draft has made small incremental improvements which are appreciated. The Plan is being pieced together "on the fly" so to speak with each draft informed by public comment. In theory, this represents good public outreach, although in reality the short timing between the drafts and the number of drafts makes it very difficult for local agencies and other community stakeholders with limited resources to keep up. It would be less concerning if we felt the County's past comments were reflected in subsequent drafts. Unfortunately, this has not been the case, with Draft 4 being no exception.

As the Delta Stewardship Council continues to develop the Delta Plan, we would strongly encourage that you re-evaluate the current pace of the planning process to allow adequate time for meaningful input. The current timeline, as outlined in statute, is unrealistic. In addition, the substantive sections of the Plan are clearly lacking in detail and will impede the adequacy of an environmental analysis that will be necessary prior to Plan adoption.

As a local agency, the focus of the County's comments has been on the potential impacts of the Delta Plan and the Bay Delta Conservation Plan (BDCP) on the County and its agricultural community. We have not felt prior drafts, nor do we feel Draft 4, provide enough clarity on how local impacts will be evaluated and mitigated. Even more concerning is that such impacts are

Building & Safety
David Cliche
Building Official

Planning Services
Mike Yankovich
Program Manager

Environmental
Health
Terry Schmidbauer
Program Manager

Administrative
Services
Su Krishnan
Sr. Staff Analyst

Public Works-
Engineering
Paul Wiese
Engineering Manager

Public Works-
Operations
Wayne Spencer
Operations Manager

barely even acknowledged other than vague references to “continued economic sustainability of Delta agriculture” or “protecting and enhancing the agricultural values of the California Delta as an evolving place.” Chapter 8 touches on this topic but commits far more text to how the Delta could evolve as a recreational destination. It seems quite optimistic to believe that economic activity associated with recreation would offset the loss of an already viable agricultural economy in our County.

The Plan also seems to contend that agricultural activities and recreation can be synergistic or that agriculture and habitat restoration can co-exist and thrive. Those are leaps of faith that warrant far more analysis than what has been committed. Without sufficient analysis, those are simply optimistic assumptions other than perhaps in very localized and limited circumstances. A more realistic scenario is that once habitat restoration areas begin to be intertwined within established agricultural areas, they will undermine agricultural activities and lead to further erosion of agriculture over time. This is why we believe it is imperative that an honest assessment of impacts is made in the Delta Plan, and that requirements are explicitly included for full mitigation of impacts.

The BDCP and other Delta planning documents target thousands of acres for ecosystem restoration in the Cache Slough and Suisun March areas in Solano County. We are assuming lands converted through ecosystem restoration will be under State and Federal ownership. This will have a direct impact on the County as lands transition from private to public ownership and are taken off the tax rolls. This will reduce property taxes collected and will, over time, have other economic impacts as the farm economy erodes. How will such impacts be mitigated? Are State and Federal governments prepared to provide resources to maintain roads and other vital infrastructure or provide for mosquito abatement or mitigate for the loss in our property tax base? The Delta Plan as currently drafted barely addresses these types of impacts, and not in a meaningful way. Deferring to the Delta Protection Commission or the Delta Conservancy is not sufficient. The Delta Plan is a foundational document for Delta planning efforts and needs far more specificity and substance in these areas.

From Solano County’s perspective, it seems we are being punished for being good stewards of Delta lands. The County has protected Delta areas from urbanization. The County has a stellar record for protecting farmlands. Some of the richest farm soil in the State is in Solano County, including the County’s Delta areas. The County has been a role model for implementation of the State’s farmland preservation policies. The County’s Delta farming areas are sustainably farmed and less resource intensive than many other agricultural areas of the state. Now all signs point to a targeting of our Delta farming areas for ecosystem restoration. The Plan should consider a limit on the total acres that our County should be subject to for planned ecosystem restoration. And when it does occur, there should be a commitment in plan provisions for joint planning of restoration areas that includes consultation and partnership with local agencies. The Plan, as

currently drafted, almost completely ignores the need for this type of collaboration. Our guess is that without such collaboration, the Plan is unlikely to meet its goals. There is a line on page 12 of the Plan in the third paragraph of “The First Delta Plan: 2012” section that states “achieving the co-equal goals will depend on collaborative effort and unprecedented levels of coordination and cooperation among State, Federal, and local governments; they cannot be singularly achieved by the Council. This is a positive statement, but is not reflected, or built upon in a meaningful way, in substantive sections of the Plan.

To further elaborate, there is considerable text to the Draft Plan devoted to “covered areas” and “certifications of consistency.” The Council has received numerous comments and correspondence from various stakeholders expressing concerns with the scope and expansion of authority the Council is attempting to assume as a result of these provisions. We agree with many of these comments. What is worth noting is that these provisions seem to establish a one-way relationship whereby anyone proposing an action is under the review authority of the Council, either directly or in appeal situations. What is not included but should be, is the reverse, whereby the State is also obligated to consult with local agencies as State projects are planned that would have direct impacts on the County, other local agencies and associated communities. We have prepared potential plan language (attached) that addresses a process for local consultation. We feel strongly that language of this type should be inserted into the Delta Plan.

The County recognizes that the Delta Plan and related Delta planning efforts involve complex relationships and many interests. It is clear that not all interests can be satisfied in all ways. We have tried to focus our comments on aspects of the Delta Plan that directly affect the County. We truly believe the Delta Plan as currently drafted falls far short when it comes to acknowledging that local agencies have a place in this process and providing clear plain language for consultation and mitigations of impacts. As noted earlier, the Plan notes the benefits and necessity of collaboration with locals who know the landscape best. Unfortunately, the Plan as currently drafted lacks the specificity and substance to effectuate true collaboration. We can only hope this changes with subsequent drafts.

Attached are additional chapter and text specific comments for further review. Also attached are suggestions for Master Planning and local consultation, as well as a copy of Solano County’s list of general comments and concerns regarding Delta plan efforts.

In closing, we respectfully request your thoughtful consideration of all our comments. We also ask that the current pace of the planning process, as previously noted, be evaluated to ensure that the final product captures stakeholder input and meets the intent of the Legislature.

Fourth Draft of the Delta Plan: Solano County Comments
June 24, 2011

Thank you again for further considering our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Emlen", with a long, sweeping horizontal stroke extending to the right.

Bill Emlen, Director
Solano County Resource Management

cc: Solano County Board of Supervisors
Birgitta Corsello, Assistant County Executive
Delta Counties Coalition
David Okita, General Manager, Solano County Water Agency
Mike Hardesty, General Manager, Reclamation District 2068
Steve Chappell, Suisun Resource Conservation District

Attachments:

1. Chapter Specific Comments
2. Suggested Master Planning and Consultation Text Inserts
3. Solano County's Delta Objectives List

RDrive\Admin\Director\Delta

CHAPTER SPECIFIC COMMENTS

Executive Summary

- The Delta Reform Act of 2009 established the coequal goals:

Coequal goals means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. (Water Code section 85054)

Although this document says that achievement of the coequal goals “must be done in a matter that is mindful of those who live, work, and recreate in the Delta region, and in concert with local, regional, and other statewide efforts to ensure the state’s water supply reliability,” to be effective, ethical, and sustainable, such goals must be reached in a way that does not jeopardize the financial, environmental, or socio- economic foundation of one region in order to benefit another. This also makes it critical that projects in the Delta, once identified, have impact assessment studies performed up front to determine the environmental and economic impacts.

- The second bullet on page 5 says that “until updated flow criteria are established to protect the Delta ecosystem, it is impossible to determine reliable levels of urban and agricultural water supplies available from the Delta.” It seems inconsistent that the Delta Plan could move forward with major habitat restoration efforts without establishment of flow criteria that would ensure reliable flows and water quality standards for in-Delta and ecosystem interests.
- Page 6 references the finance plan framework and how achievement of the coequal goals will hinge on California’s willingness to commit to “significant and sustained investment in water and the environment.” This investment must be reasonable, understandable, and transparent. It should not destroy or severely jeopardize the well-being on one region for the benefit of another. Funding for water supply and ecosystem restoration projects (that includes full mitigation for impacts) should be in place before any projects are initiated.
- Page 6 also says that “The Delta poses one of the most complicated environmental and natural resource issues of the modern era. The unmatched challenge of balancing the coequal goals...will require unprecedented effort, creativity, and compromise.” This must include clear explanations that lay audiences can understand regarding proposals and the risks involved.

Chapter 1

- Since the Suisun Marsh is not part of the Delta, a brief discussion of its importance and why it is so closely linked to the Delta should be included in this chapter.

- The first bullet on page 14 refers to a “balanced application of the Public Trust Doctrine.” What specifically does the term “balanced application” mean in light provisions contained in SBx7 1 (Chapter 5, Statutes of 2009-10 Seventh Extraordinary Session), which clearly states that existing water rights shall not be diminished, impaired or otherwise affected in any manner whatsoever.
- The first bullet on page 15 refers to California leading the nation in water efficiency and sustainable water use. If this is to be the case, a major public education program must be a part of the Delta Plan’s implementation.

Chapter 2

- Although the Delta Reform Act requires a strong scientific foundation for Delta Stewardship Council decisions, key information must be communicated in terms that are understandable to lay audiences. Local government and various community interests need to understand what the science means and must be able to play a meaningful role in shaping decisions that impact them directly.
- Page 29, at the end of paragraph 5, says that “the design step also includes identifying adequate funding to carry out both the action(s) and the associated monitoring for an appropriate length of time. Who determines what an appropriate length of time is and how will this be determined?

Chapter 3

- As a general matter, the County is appreciative of Draft 4’s modifications to “covered actions.” Particularly we appreciate the emphasis that “covered actions” must occur “within the boundaries of the Delta or Suisun Marsh.”
- On page 45, the County has identified two concerns relative to ministerial projects being considered “cover actions” only if a certification of consistency has been filed for the existing ordinance or other legal or regulatory provisions. This should only apply prospectively. Without this clarification, local agencies would have to obtain certification of consistency on all existing, applicable ordinances or provisions, which is an onerous and costly administrative burden. A second issue is that certain ordinances are controlled by state law. Hence, requiring such a certification is redundant.
- The Delta Plan should consider enumerating other types of covered actions that are not “significant” in addition to the ones provided on pages 44-45.
- Page 41 references a certificate of consistency. It is recommended that the Delta Stewardship Council generate this document in line with the checklist that is referenced later on page 45.

Chapter 4

- This entire document is focused on the continued use of the Delta for much of the State's water supply reliability at the expense of Delta communities. Further, several important decision-making processes involving the Delta are being rushed and conducted in a less than public and transparent manner. These processes have not consistently provided a clear window to the public (or to affected local governmental entities) regarding the multiple proposals and potential impacts of actions targeted at the Delta. The document lacks sufficient assurances for the Delta that it will not be harmed as a result of proposed changes. There is also limited discussion regarding performing a thorough analysis of impacts to Delta interests to ensure full mitigation of those impacts and even less discussion about ensuring Delta Counties and other interests remain whole as a result of the proposed changes in the Delta.
- Chapter 4 lacks clarity concerning how the system will work operationally to avoid adverse impacts on overall fresh water flows through the Delta and into the Bay system. The County needs assurances that any system implemented maintains adequate flows to meet the needs of senior water righter holders with no impacts on existing allocations. There must be sufficient flows to prevent salinity intrusion further into the Delta so protections required by the Suisun Marsh Plan are adhered to.
- The first three bullets on page 75 under *Administrative Performance Measures* relative to urban and agricultural water suppliers should include the specific percentages that are recommended, assuming these numbers are available.

Chapter 5

- Solano County strongly recommends inclusion of a clearly defined and structured consultation process with counties and other local entities that will be impacted by implementation of the Delta Plan. This consultation process should require preparation of a specific master plan for areas that might be converted. It should allow agricultural and other local economic and ecosystem interests who know the local environment and infrastructure to participate in creating plans that will lead to compatible co-existence. This type consultation process should include procedures and criteria for determining impacts along with commitments to finance and fully mitigate those impacts.
- One of the habitat restoration projects that is recommended to move forward is the Cache Slough Complex. Solano County requested and had an initial meeting with Department of Fish & Game and Department of Water Resources staff to discuss how we can work collaboratively on Prospect Island restoration issues. When possible and appropriate, the County is committed to working collaboratively with State and Federal representatives to find mutually beneficial ways to protect local interests. Collaborative efforts may include layering habitat restoration opportunity areas for species with local habitat conservation plans within the same area.

- The first bullet on page 98 says that the SWRCB adopts and implements Delta flow objectives by June 2, 2013 and adopts flow objectives for the major tributary rivers to the Delta by June 2, 2018. Until such objectives are adopted, there must be enforceable assurances for the preservation of existing water quality standards.
- The second bullet on page 98 under *Driver Performance Measures* refers to pilot-scale Delta habitat restoration projects being developed and initiated in the priority areas described in ER R1. Somehow this measure should include the effectiveness with which State and local interests are engaged in the process.

Chapter 7

- According to the California Central Valley Flood Control Association (letter to Delta Stewardship Council dated June 13, 2011), "Since the Delta levees improvements have been implemented over the last 23 years, pursuant to SB 34 in 1988 (Delta Levees Program), nearly **all** levees in the Delta are **above** the 100-year floodplain, and the failure due to high tides or high flows has been essentially eliminated." As a result of the success of this program, the Council should recommend that the Legislature approve legislation to eliminate the sunset date (July 1, 2013) on the existing Delta Levees Program as currently defined, Water Code Section 12986 and 12987.5, since it has proven itself to be a successful and cost-effective program over the last 23 years.
- Regarding Recommendation RR R7 to "create a Delta Flood Management Assessment District with fee assessment authority (including over State infrastructure) to provide adequate flood control protection and emergency response for the regional benefit of all beneficiaries...and other entities that benefit from the maintenance of the levees, such as water exporters who rely on the levees to protect water quality," it will be critical to carefully analyze the liability implications associated with development of this type entity and its financial impact on participating agencies. Details regarding the structure, method of assessment, participants and public process involved to establish this type district are unclear at this time.

Chapter 8

- The Solano County Park and Recreation Commission and staff have already submitted comments on the State Department of Parks and Recreation's, "Delta Recreation Proposal" and the Delta Protection Commission's, "Great California Delta Trail Blueprint Report for Contra Costa and Solano Counties." It is assumed those comments continue to be valid and will be incorporated into the respective report review processes.
- In response to section entitled, "Natural, Agricultural and Cultural Heritage" on page 160. Solano County Parks would like to have a greater future role in sharing this natural, agricultural and cultural heritage with Delta residents. Parks located in Rio Vista (Sandy Beach Park) and in Suisun Marsh

(Belden's Landing boat launch) are possible "gateways" for the Delta. This may include interpretive panels, and jumping-off points for interpretive and recreational activities.

- Solano County would like to have provisions in place to ensure consultation with local agencies and counties regarding recreation proposals and evaluation of local impacts. The consultation process should require early preparation of specific master plans for areas that might be considered for recreational activities. The master plan process would allow agricultural and other local economic and ecosystem interests who know the local environment and infrastructure to participate in the crafting of plans that would lead to compatible coexistence. The consultation process should also include procedures and criteria for determining impacts and both the commitment and financing to fully mitigate those impacts and cover ongoing maintenance and operational costs. The Stand Lands Commission must be more respectful to recreational uses on lands they have authority over.

Chapter 9

- The public is not ever going to agree to provide funding for large projects they do not understand and support. The Finance Plan is based on the key tenets of beneficiaries paying for benefits and stressors paying for stresses they place on the ecosystem. These are largely foreign concepts that will require a great deal of public information and education on water-related issues and the necessity of broad-based funding.
- It is troubling that this entire chapter does not set out standards or processes to provide for the financial stability and sustainability of Delta communities that will be most significantly impacted by State and Federal proposals to move water out of the Delta.
- Local Delta governments and landowners should not have to bear the burden of paying for modeling, monitoring, data collecting or facility improvements that are necessary to achieve objectives that benefit the entire state.
- Funding for water supply and ecosystem restoration projects should be in place before projects are initiated.

Federal/State Agency Consultation with Counties and Local Agencies

Achieving the co-equal goals of the Delta Plan will necessitate changes in today's Delta fabric. The thousands of acres of land slated for conversion to habitat projects will potentially take out of production very fertile agricultural lands and will impact existing Delta communities and underlying economics of the region. Careful and coordinated planning and engagement with the Delta communities and the local governmental entities that support those communities could reduce impacts and further the Plan's objectives. Accordingly, the following procedures shall be followed as habitat projects are contemplated and initiated.

Pre-project Master Planning

A conceptual Habitat Restoration Master Plan and Policy Framework shall be prepared by the proponent agency for each County within the legal Delta prior to initiation of any habitat restoration project within an affected County jurisdiction. Plan preparation shall include early formal consultation with County agencies (counties will coordinate outreach with local communities and special districts). The conceptual plan shall consider:

- Habitat patterns that protect prime farmlands for continued agricultural use and reasonable agricultural operations. Every effort should be made to avoid fragmenting viable agricultural areas and disrupting access to key agricultural infrastructure.
- Impacts on county circulation network and emergency response capabilities.
- Impacts on flood control and levee networks.
- Impacts on the social and economic fabric of established Delta communities. Retention of existing communities and their underlying viability shall be a key consideration.
- Impact on local water diversions and conveyance systems.
- Other local issues and considerations as identified during the consultation process.

Review of Specific Habitat Projects

Prior to initiation of any habitat project, the affected county and other affected local entities (i.e. special districts, etc.) shall be consulted for review of detailed plans and support documentation. Project plans shall be reviewed for consistency with the countywide conceptual Master Plan and other local planning documents such as the County General Plan. Every effort shall be made to establish a pre-project agreement with the affected county or local agency that addresses how the co-equal goals of the

Delta Plan can be met while minimizing impacts on the local county or agency. Absent an agreement, the following, as applicable, must be initiated and addressed:

- Mitigation for farmlands lost due to conversion to habitat projects per standards established in local ordinances.
- Preparation of an economic analysis to qualify impacts to the local economy including fiscal impacts to local government. If impacts are identified, a funding commitment would be required and a funding source identified to fully compensate local government and communities for the identified impacts including, but limited to, loss of property and sales taxes. The economic analysis must also consider third party impacts and potential additional public safety costs caused by increased public access and recreational activities in restored wetland areas.
- Relief from future restrictions or conditions on urban discharge and runoff due to the existence of new habitat.
- Extend ESA take protections to existing agricultural operations and runoff so as to avoid potential restrictions resulting from the introduction of rare or endangered species in newly created habitat areas.
- A hydrologic and hydraulic analysis of possible short term and cumulative impacts on the flood control system caused by proposed habitat restoration projects. Any impacts should be mitigated so as not to harm the integrity of the existing flood control system and local properties in the vicinity. Funds shall be provided to ensure system is retained or restored to design level or higher.
- Identification and commitment of funds for long- term maintenance of habitat restoration area.
- Identification and commitment of funds for long term maintenance of levees in the vicinity of a habitat restoration project including funds for reinforcing levees needing upgrade to compensate for project impacts that might otherwise compromise the integrity of the existing system.
- Development of a public outreach program to ensure Delta communities are advised and fully aware of changes that will impact them.
- Other measures necessary to mitigate local impacts while ensuring the co-equal goals of the Delta Plan are met.

Specific Solano County Objectives

- **Full Mitigation for economic, social, public safety, and service impacts** of conversion of agricultural and other lands for habitat restoration purposes. Mitigation to be considered would include:
 - In lieu payments for lost property tax revenue to the County.
 - Payment of third party impacts.
 - Financial support to local agencies for staff required for Delta Planning efforts.
 - Mitigation funds to facilitate acquisition of farmland for permanent preservation (fee title or easement) at a ratio of 1.5 acres per acre converted as required by the County General Plan.
- **Protect Integrity of Levee and Flood Control System.** Introduction of habitat to restoration areas may impact the hydrology and hydraulics of an area and could be detrimental to nearby agricultural operations and other land uses. Detailed engineering analysis is necessary and appropriate mitigation must be in place to ensure the overall system is not compromised.
- **Provide adequate funding for levee maintenance.** This funding must address short and long term needs and be from a reliable source.
- **Assurance that there will be long term financial support** from Federal/State Agencies for long and short term maintenance and service obligations (including public safety) in habitat restoration areas.
- **Relief from potential future urban runoff or discharge requirements** resulting from the establishment of habitat restoration areas.
- **Extend ESA take protections** to existing agricultural operations and runoff so as to avoid potential restrictions resulting from re-introduction of rare or endangered species in newly created habitat areas.
- **Full Federal/State funding for fish screens and other environmental mitigation requirements** that might be required for local agricultural water diversions and related reclamation activities.
- **Support to manage impacts of habitat restoration over the long term.** Develop a County led effort that is sanctioned by the federal and state

government to ensure that ongoing monitoring and analysis is conducted on any habitat restoration area. Policies will be developed to determine specific remedies for detrimental impacts.

Specific Funding Requests

- Funding for a Cache Slough Restoration Opportunity Area Study—including \$15K in staff support to facilitate Requests for Proposals, reviews of drafts and consultant selection.
- A stipend of \$250K annually to participate in Delta Planning and other related activities. Funding would be used at Solano County’s discretion to provide staffing for meetings and other involvement deemed appropriate.
- Funding for the study of economic, environmental, and ongoing evaluation of adaptive management in any Restoration Opportunity Areas identified for habitat restoration by the BDCP or as the result of the implementation of the Biological Opinions.
- Recognition that the Delta has Area-of-Origin rights and protection against fees that categorize Solano County inappropriately as a “beneficiary” of certain changes imposed by the export community.

Public Process Requests

- A transparent public process including regular media updates and community meetings for Solano County residents to ensure they are aware of all proposed changes along with any impacts. Public information should be available in English and Spanish.
- If a water fee is proposed, the public should know what it is for, and everyone should be able to monitor its use and related progress on any related projects or programs. An extensive public education process should accompany the initiation of any water fee proposal.